Supreme Court, U. S.
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Supreme Court of the United States

October Term, 1975
No. 75-1242

CITY OF EUCLID, OHIO,
Petitioner,

vs.

ROYAL AMERICAN CORPORATION, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Ohio

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Supreme Court of the United States

October Term, 1975

No. .....

CITY OF EUCLID, OHIO,
Petitioner,

vs.

ROYAL AMERICAN CORPORATION, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Ohio

Petitioner, the City of Euclid, Ohio, prays that a Writ of Certiorari issue to review the judgment of the Ohio Supreme Court entered on December 5, 1975, dismissing the appeal and overruling Appellant-Petitioner's Motion to Certify the Record to review the decision of the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District, filed on August 21, 1975, reversing the decision of the Common Pleas Court of Cuyahoga County, Ohio, filed September 4, 1974.

CITATIONS TO OPINIONS BELOW

The Journal Entry of the Ohio Supreme Court is reported at 48 Ohio State Bar Association Report 1743 (December 15, 1975) and is set forth in the Appendix, *infra*, at page A1. The Opinion of the Court of Appeals for Cuyahoga County, Ohio, Eighth Appellate District is unre-

ported and is set forth in the Appendix, *infra*, at page A3. The Journal Entry of the Common Pleas Court of Cuyahoga County, Ohio, is unreported and is set forth in the Appendix, *infra*, at page A12.

JURISDICTION

The judgment of the Ohio Supreme Court was rendered and filed on December 5, 1975. The jurisdiction of this Court is invoked pursuant to Title 28, U.S.C. Section 1257 (3).

QUESTIONS PRESENTED FOR REVIEW

1. May a state court exercise its delegated authority to interpret and declare a municipal legislative enactment unconstitutional as violating the Equal Protection Clause of the Fourteenth Amendment without first ascertaining if the rights impinged by the legislative enactment are constitutionally "fundamental"?

2. May a state court in exercising its delegated authority to interpret the Equal Protection Clause of the Fourteenth Amendment substitute its priorities for the expenditure of taxpayer's money and for the furnishing of municipal services for those priorities established by the duly elected officials of the municipality?

3. Is a municipal legislative scheme which provides for once-a-week solid waste collection at single family and two-family dwellings, but not at apartments and condominiums, so arbitrary and irrational as to violate the apartment and condominium owners' fundamental constitutional rights under the Equal Protection Clause of the Fourteenth Amendment?

CONSTITUTIONAL AND CITY ORDINANCE PROVISIONS INVOLVED

U. S. Const. Amend. XIV Sec. 1:

> ". . .; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

City of Euclid Ordinance 49-1974:

Ordinance No. 49-1974

By—Messrs. Chukayne, Eckart, Farrell,

Kosmetos, Otcasek, Simonelli,

Sustarsic, Takacs, Talty.

An emergency ordinance to supplement the Codified Ordinances of the City of Euclid by enacting new section 941.26 relating to the pick-up and collection of solid waste materials from multi-family, condominium, and commercial structures in the City of Euclid.

WHEREAS, this Council wishes to approve the action of the Administration of the City of Euclid on March 1, 1972 in discontinuing service for the collection of solid waste materials from apartment houses, condominiums, and commercial structures in the City of Euclid; and

WHEREAS, it has been determined by a Court of Common Pleas, Cuyahoga County, that such action must be approved and authorized by legislative action and must include apartment and condominium structures as a class and commercial structures as another class in accordance with the Court's opinion, but the Court stayed such injunction pending appeal to maintain the status-quo; and

WHEREAS, the subject matter of this ordinance constitutes an emergency in that the same provides for the usual daily operation of a municipal department,

NOW, THEREFORE, be it ordained by the Council of the City of Euclid, State of Ohio:

Section 1: That the Codified Ordinances of the City of Euclid, be and they are hereby supplemented by enacting new Section 941.26 thereof to read as follows:

941.26 STRUCTURES EXCLUDED.

The City will not collect any solid waste materials from (1) any apartment or condominium structures or (2) any commercial structures in the City of Euclid.

Section 2: That this ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, safety and welfare of the citizens of the City of Euclid and for the daily operation of a municipal department, and provided it receives the two-thirds vote of all members of Council elected thereto, shall be in full force and effect from and after July 1, 1974.

Attest:
/s/ David A. Lawrence
Clerk of Council

Passed: Feb. 19, 1974

/s/ Michael Kosmetos
President of Council

Approved:
/s/ Harry J. Kunth
Mayor

STATEMENT OF THE CASE

This case concerns a constitutional attack on the City of Euclid, Ohio, Ordinance No. 49-1974 which provides for the exclusion from city operated solid waste material collection of apartments, condominiums and commercial structures in the City of Euclid. Under the codified ordinances of the City of Euclid, the City has committed itself to provide once-a-week curbside solid waste pickups for single and two-family dwellings within the City, but, pursuant to Ordinance No. 49-1974 has stated:

> "The City will not collect any solid waste materials from (1) any apartment or condominium structures or (2) any commercial structures in the City of Euclid."

The constitutional attack on this ordinance was brought by the plaintiffs-respondents, several apartment owners within the municipality. They claim that the classifications set forth in the ordinance are discriminatory and unconstitutional in contravention of the Fourteenth Amendment to the United States Constitution.

Euclid is a suburb of, and physically adjoins, the City of Cleveland, Ohio. The population of the City according to the 1970 census approximated 71,000 people. At the time of trial in this matter in 1974, the City contained approximately 14,000 single family dwellings and 720 two-family structures. There were 49 apartment complexes, containing 9,169 apartment units and 268 condominium units within the City. The population of these apartments and condominium units at the time of trial approximated 27,500 residents or roughly 40% of the city's population.

Prior to the spring of 1972 the City provided once-a-week curbside solid waste collection service to both single and two-family dwellings as well as those apartment

and condominium complexes which requested the municipal service. It is estimated that approximately 1870 units within the municipality, out of the total 9169 units, requested this service.

In the spring of 1972 because of taxing and budgetary restraints, the Mayor and Service Director, as an administrative matter, determined that the City could no longer bear the burden of servicing the apartment and condominium units. Accordingly, by administrative order, the service to these multi-family dwellings was terminated. The plaintiffs, or their predecessors in interest, challenged this administrative decision in prior litigation on the grounds that under state law this determination could only be made by the legislative branch of the City's government. The courts agreed, although they intimated that the classification, if done legislatively, would be proper. Accordingly, on February 19, 1974, the City Council passed the ordinance under challenge herein, No. 49-1974, giving legislative authorization to the determination not to service apartment and condominium structures.

Euclid does not finance its solid waste collection through a user charge, but, rather, utilizes general operating revenues to fund this service. In recent years because of increased volumes of refuse material and more stringent restraints imposed by the Ohio Environmental Protection Agency, the collection, incineration and disposal of solid waste has become more expensive. For example, the municipality is now reviewing plans, necessitated by environmental considerations, to update its two 100 ton capacity incinerators to handle a capacity of 350 tons per day. The cost of this upgrading is estimated to be $10,000 per ton or $3,500,000.00 in total.

It was estimated at trial by the City's Superintendent of Solid Waste that if all apartment and condominium complexes required the City to provide solid waste collection, additional annual operating expenses of approximately $1,000,000.00 would be incurred and a capital investment for additional incinerator capacity and equipment could approximate $4,500,000.00.

The past taxing and budgetary restraints as well as the enormous potential financial outlays, taken out of general operating revenues, were not the only basis for the legislative determination to enact Ordinance 49-1974. Because of the physical layout of the apartment complexes, collection could only practically be effected by requiring municipal equipment to transgress on private property. Further, the nature of handling apartment complex waste, essentially located in "dumpsters", would require procuring new equipment and hiring or training personnel to operate these "dumpsters". Based on these considerations the municipality determined not to provide solid waste collection services to apartments or condominium complexes.

In this proceeding the trial court, the Common Pleas Court of Cuyahoga County, Ohio, upheld the constitutionality of Ordinance 49-1974 after a short hearing in which practically all evidentiary material was stipulated, thereby obviating the need for detailed factual findings. See Appendix A12. On appeal, the Cuyahoga County, Ohio, Court of Appeals, Eighth Appellate District, reversed, one judge dissenting, and found that the ordinance in question was unconstitutional in that it discriminated against apartment and condominium owners and residents. See Appendix A3. The Ohio Supreme Court declined to accept jurisdiction and review the Court of Appeals' decision. See Appendix A1. The Petitioner seeks to have this Court review the Court of Appeals' and Supreme Court's decision with respect to the constitutionality of the legislation excluding from municipally operated solid waste collection apartment and condominium structures.

REASONS FOR GRANTING THE WRIT

I. To Clarify the Standard of Review Applicable to Furnishing Discretionary Municipal Services When Challenged Under the Equal Protection Clause of the Fourteenth Amendment.

In applying the requirements of the Fourteenth Amendment to the defendants' policies of solid waste collection, the Ohio Court of Appeals, and implicitly the Ohio Supreme Court by declining to review the decision of the Court of Appeals, failed to resolve, or even consider, the nature of the constitutional right allegedly impinged by the Euclid ordinances. Rather than determining whether the apartment owners' rights were constitutionally "fundamental" so as to be protected by the Constitution, or whether the Euclid ordinance impinged upon some "inherently suspect" class, the Court of Appeals proceeded directly to the issue of whether, in its opinion, there was some "rational basis" for the municipal decision not to collect garbage from inhabitants of apartments and condominiums. In failing to analyze the nature of the constitutional claim asserted, the Ohio Court of Appeals' ruling directly controverts the recent decision of the United States Court of Appeals for the Seventh Circuit, *Goldstein v. City of Chicago,* 504 F. 2d 989 (7th Cir. 1974).

Goldstein presents exactly the same issue as the instant case; namely, the exclusion of multiple dwellings from solid waste collection. The Seventh Circuit, in upholding the Chicago legislation, found that multiple dwelling ownership is not an inherently suspect classification and garbage collection is not a fundamental right. See *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1, 61 (1973).

The Seventh Circuit found a rational basis for the ordinance as follows:

> "The city contends and we agree that the ordinance does not distinguish between types of ownership but between types of building—single family home versus large multiple unit buildings—and that the reason for this distinction is that the owner(s) of large residential buildings with a great amount of garbage have more effective bargaining power with private scavenger services than the owner of a single unit.
>
> The city's distinction between types of residential structures in providing efficient sanitation is, in our judgment, reasonable. Accordingly, the ordinance does not violate the equal protection clause of the Fourteenth Amendment." 504 F. 2d at 992.

The case of *Yick Wo v. Hopkins,* 118 U.S. 356 (1886), relied upon by the Ohio Court of Appeals, is not on point. *Yick Wo* dealt with unequal law enforcement by local officials in San Francisco based upon the race and national origin of the individuals involved. Similarly, municipal services were unequally provided based on race in *Hawkins v. Town of Shaw, Mississippi,* 437 F. 2d 1286 (5th Cir. 1971). However, this Court has repeatedly held that if the seeming inequality in the provision of municipal services does not affect a "suspect" class or impinge upon a constitutionally "fundamental" right, the municipality's actions will be upheld under a relaxed "rational basis" test. *Palmer v. Thompson,* 403 U.S. 217 (1971).

The *Palmer* case is of further significance since *Palmer* upheld Jackson, Mississippi's defenses of economic unfeasibility in closing their public swimming pools rather than operating them on a desegregated basis. If we consider the furnishing of municipal solid waste collection no different

from a constitutional standpoint than the operation of swimming pools, the following language from *Palmer* should serve as direct and controlling precedent in the instant case:

> "It has not been so many years since it was first deemed proper and lawful for cities to tax their citizens to build and operate swimming pools for the public. Probably few persons, prior to this case, would have imagined that cities would be forced by five lifetime judges to construct or refurbish swimming pools which they may choose not to operate for any reason, sound or unsound. Should citizens of Jackson or any other city be able to establish in court that public, tax supported swimming pools are being denied to one group because of color and supplied to another, they will be entitled to relief. That is not the case here." 403 U.S. at 227.

Further, the Ohio Court of Appeals violated proper constitutional analysis by substituting its judgment on the priorities of the furnishing of municipal services for those of the duly elected local officials. In so doing, the Ohio Court of Appeals violated this Court's ruling in *McGowen v. Maryland,* 366 U.S. 420, 425-26 (1961), wherein this Court held:

> "Although no precise formula has been developed, the Court has held the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only when the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. The

> statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."

In invalidating the Euclid Ordinance 49-1974, the Ohio Court of Appeals gave no credence to the municipality's justification of the increased cost of collection of multiple family dwelling's solid waste, the increased volumes produced by such dwellings and the different manner of garbage pickup required by such dwellings. The Court verbalized no more rationale for its decision than the following:

> "Citizens living in both types of residences require the removal of their garbage and rubbish on a regular basis for health and safety reasons. There is no rational basis for the municipal decision not to collect garbage from inhabitants of apartments on the one hand and to collect it from the inhabitants of residential dwellings on the other." See Appendix A8-A9, *infra*.

This Court in *Williams v. Lee Optical Co.*, 348 U.S. 483, 489 (1955) recognized the problems of legislative classifications:

> "The problem of legislative classification is a perennial one, admitting no doctrine definition. Evils in the field may be of different dimensions and proportions requiring different remedies. Or so the legislature may think. . . . Whether a form may take one step at a time addressing itself to the phase of the problem which seems most acute to the legislative mind. . . . the legislature may select one phase of a field and apply a remedy there, neglecting the others. . . . The prohibition of the Equal Protection Clause goes no further than the invidious discrimination. We cannot say that that point has been reached here."

There is an inherent uniqueness in the equal protection context of cases involving those municipal services which require capital expenditures. The provision of municipal services to the property of residents is largely a question of priorities which our system of government concedes should be determined by elected officials responsive to the people. Certainly this Court may note the difficulties every city is having in establishing such priorities, especially in an age of bond defaults requiring a reduction of services. For a court of law to straitjacket a municipality in the provision of municipal services based on its subjective determinations of "proper" recipients for the services does no more, in effect, than result in the substitution of the legislative judgment for that of the local elected officials. Such a result violates the doctrine of separation of powers and is not compelled by a reading of this Court's interpretations of the Equal Protection Clause of the Fourteenth Amendment.

II. To Resolve Conflicts Within and Among the Circuits and State Courts Concerning the Standard of Review of the Equal Protection Clause Applicable to Furnishing Municipal Services.

There is a lack of uniformity among the courts as to the validity of local legislation providing for refuse collection similar to that involved in the instant case. This lack of uniformity results from the courts' failure to analyze the nature of the constitutional interest at issue, as well as the willingness of the courts to substitute their judgment as to service priority for that of the local elected officials.

As previously noted, the Ohio Court of Appeals' opinion in the instant matter conflicts with the *Goldstein v. City of Chicago* case. *Goldstein*, in turn, is at variance with a decision involving a similar ordinance of the City of Detroit. *Alexander v. City of Detroit*, 392 Mich. 30, 219

N.W. 2d 41 (1974), *reversing*, 205 N.W. 2d 825 (Mich. Sup. Ct. 1973). In turn, one New Jersey Court has declared unconstitutional an ordinance excluding garden type apartment houses from refuse collection, while another New Jersey Court has, as a practical matter, upheld the limitation of municipal garbage pickup to apartment complexes by approving curbside service only. *Compare Boulevard Apartments, Inc. v. Mayor and Council of the Borough of Lodi*, 110 N.J. Super. 406, 265 A. 2d 838 (Super. Ct. 1970) *with Pleasure Bay Apartments v. City of Long Branch*, 66 N.J. 79, 328 A. 2d 593 (1974).

Another New Jersey court invalidated a similar "curbside only" service requirement. *Teagen Co. v. Borough of Bergenfield*, 119 N.J. Super. 122, 290 A. 2d 753 (Super. Ct. 1972). See also *Leimpeter's Disposal Service, Inc. v. Borough of Carteret*, 121 N.J. Super. 18, 295 A. 2d 411 (1972) (upholding ordinance prohibiting proprietary waste collectors from disposing of non-residential waste in municipal disposal area). Further, although the Court of Appeals in the instant case did not consider the municipality's cost argument persuasive, in *507 Island Corporation v. North Bay Village*, 236 So. 2d 467 (Fla. Ct. App. 1970) the Florida Court of Appeals upheld an ordinance which imposed a higher charge on owners or operators of apartment buildings for garbage collection than that imposed on condominium owners or operators.

The foregoing cases, dealing only with the provision of municipal solid waste collection, point out the conflicts and confusion among the courts in applying the equal protection analysis to the furnishing of municipal services. Considering the breadth and scope of the services presently furnished by municipalities, petitioners respectfully submit that this Court should determine and resolve the conflict

within and among the lower courts as to the proper analysis to be applied in the challenge under the Equal Protection Clause in the furnishing of municipal services.

CONCLUSION

For the reasons set forth above, it is respectfully prayed that a writ of certiorari be issued as petitioned herein.

Respectfully submitted,

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APPENDIX

ORDER OF SUPREME COURT OF OHIO DISMISSING APPEAL

(Dated December 5, 1975)

No. 75-947

THE SUPREME COURT OF OHIO
THE STATE OF OHIO, CITY OF COLUMBUS.

ROYAL AMERICAN CORPORATION *et al.*,
Appellees,

vs.

CITY OF EUCLID,
Appellant.

APPEAL FROM THE COURT OF APPEALS
FOR CUYAHOGA COUNTY

This cause, here on appeal as of right from the Court of Appeals for Cuyahoga County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

ORDER OF SUPREME COURT OF OHIO OVERRULING MOTION TO CERTIFY RECORD

(Dated December 5, 1975)

No. 75-947

THE SUPREME COURT OF THE STATE OF OHIO
THE STATE OF OHIO, CITY OF COLUMBUS.

ROYAL AMERICAN CORPORATION *et al.*,
Appellees,

vs.

CITY OF EUCLID,
Appellant.

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS FOR CUYAHOGA COUNTY TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

OPINION AND JOURNAL ENTRY OF THE COURT OF APPEALS

(Filed August 21, 1975)

Case No. 34018

COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
EIGHTH APPELLATE DISTRICT

ROYAL AMERICAN CORPORATION, *et al.*,
Plaintiffs-Appellants,

vs.

CITY OF EUCLID, OHIO,
Defendant-Appellee.

JOURNAL ENTRY

This cause came on to be heard upon the pleadings and the transcript of the evidence and record in the Common Pleas Court, and was argued by counsel; on consideration whereof, the court certifies that in its opinion substantial justice has not been done the party complaining, as shown by the record of the proceedings and judgment under review, and judgment of said Common Pleas Court is reversed. Each assignment of error was reviewed by the court and upon review the following disposition made:

On July 19, 1974, the plaintiff-appellant, Royal American Corporation, hereinafter referred to as the appellant, filed a complaint in the Common Pleas Court of Cuyahoga County against the defendant-appellee, the City of Euclid, Ohio, hereinafter referred to as the appellee. In the complaint, the appellant alleged that it was an Ohio corporation and a resident and taxpayer of the City of

Euclid; that it was engaged in the real estate business; that it owned and operated in Euclid a multiple dwelling known as Willo-Arms Apartments; that the Willo-Arms consisted of approximately 740 suites; that prior to March 1, 1972, the appellee through its Service Department had picked up and collected the garbage and rubbish of the tenants of the Willo-Arms, but that since March 1, 1972, the appellee had failed and refused to pick up the tenants' garbage and rubbish despite demand upon it to do so; and that these same situations, before and after March 1, 1972, existed for other apartment owners and their tenants.

The appellant further alleged that on February 19, 1974, the Council of the City of Euclid enacted Ordinance 49-1974, which was to be in full force and effect from July 1, 1974; that the appellee had refused to afford the occupants of Willo-Arms Apartments, and the occupants of apartments owned by others similarly situated, the same treatment it afforded other residents of Euclid relating to the collection of garbage and rubbish; that since March 1, 1972, the appellant and others similarly situated had been compelled to remove their own garbage and rubbish at their own great cost; that the appellee's refusal to collect the garbage and rubbish of the tenants of its dwelling, and that of all others similarly situated, constituted a denial of equal protection under the law and an arbitrary discrimination; that Ordinance 49-1974 constituted a denial of equal protection under the law and an abuse of municipal power; and that unless the appellee was enjoined from continuing to follow the ordinance it and others similarly situated would suffer irreparable damage for which there was no adequate remedy at law.

The appellant concluded its complaint by praying that the appellee be enjoined from failing and refusing to collect garbage and rubbish of its tenants and all others similarly

situated. It further prayed for damages suffered by it and others similarly situated, for attorney fees, and costs.

A copy of Euclid Ordinance 49-1974 was attached to the complaint. The pertinent portion of that enactment, 941.26, reads:

"941.26 STRUCTURES EXCLUDED.

"The City will not collect any solid waste materials from (1) any apartment or condominium structures or (2) any commercial structures in the City of Euclid."

On August 26, 1974, Perma Investment Company, Inc., and Elmack Investment Company filed a motion to be joined as additional parties plaintiff for the reason that they held bare legal title to the Willo-Arms property. The motion to join was granted by the trial court. Hereinafter, the term "appellants" shall include Royal American Corporation, Perma Investment Company, Inc., and Elmack Investment Company.

On August 26, 1974, the appellee, the City of Euclid, filed an answer to the appellants' complaint. In the answer, the appellee presented several defenses. In one of the defenses the appellee stated that solid waste collection service to less than half of the apartments in the City had been terminated on March 1, 1972, in response to reduced personnel, materials, equipment and funding ordinance provisions. The appellee also stated that an additional reason for the termination of apartment collection service was the enactment of Ordinance 49-1974 with its specific classifications determining eligibility for collection service. The appellee pointed out that this ordinance was enacted in February, 1974, in response to a judgment by the trial court in a related Common Pleas Court case numbered 904,622.

The case came on for trial before the court alone on August 26, 1974. The record before the trial judge consisted of eleven stipulations between the parties, pertinent portions of the record in the prior related case numbered 904,622, the testimony of two witnesses for the appellee, and a variety of exhibits.

On September 3, 1974, the trial court entered judgment for the appellee. It denied the appellants' demand for an injunction and specifically held that Euclid Ordinance 49-1974 was a constitutional enactment and classification by the Council of the City of Euclid.

On September 13, 1974, the appellants filed a timely notice of appeal. They assign two errors:

> "I. The trial court erred in failing to make the requested findings of fact and conclusions of law.
>
> "II. The trial court erred in ruling that City of Euclid Ordinance 49-1974 created a reasonable classification and was constitutional."

Both assigned errors are well taken. We reverse the judgment of the court below.

Assignment of Error No. I:

> "The trial court erred in failing to make the requested findings of fact and conclusions of law."

Rule 52 of the Ohio Rules of Civil Procedure provides in part:

> "When questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless one of the parties in writing or orally in open court requests otherwise *before the journal entry of a final order, judgment, or decree has been approved by the court in writing and filed with the clerk of the court for journalization, or not later than seven days after the party filing the request has been given notice of the court's announcement of its decision, whichever is later,* in which case, the court *shall* state in writing the conclusions of law." (emphasis supplied)

The wording of the rule is such that when a timely request for findings of fact and conclusions of law is made, the trial court has a mandatory duty to draft them. Refusal to do so in response to a proper request constitutes prejudicial error. See *Orlow v. Vilas* (1971), 28 Ohio App. 2d 57.

In the present case, the trial court entered judgment for the appellee on September 3, 1974. The appellants moved for findings of fact and conclusions of law on September 5, 1974. Rule 52 specifically allows the request for findings and conclusions to be made before a final judgment is filed with the clerk for journalization or not later than seven days after the filing party receives notice of the court's announcement of decision, whichever is later. Here the trial court, on September 3, filed the final judgment with the Clerk of Court and announced the decision at the same time on September 3. The appellants, therefore, had seven days from September 3, to make their Rule 52 request. The request was timely made on September 5, 1974. The appellants' first assignment of error is well taken. The trial court's failure to draft findings of fact and conclusions of law constituted prejudicial error.

Assignment of Error No. II:

> "The trial court erred in ruling that City of Euclid Ordinance 49-1974 created a reasonable classification and was constitutional."

The appellants' second assignment of error is also well taken. Ordinance 49-1974, which classifies apartments differently from single and two-family dwellings, denies apartment dwellers the same rights vouchsafed their counterparts in two-family dwellings. The latter have a right to garbage and rubbish collection service. The former do not. The ordinance is unreasonable, discriminatory, and invalid. Revised Code §175.43 permits a municipality to provide for the collection and disposition of garbage and rubbish and to maintain plants for its disposal. However, any municipal legislation relating to garbage collection and disposal enacted pursuant to this statute must be reasonable and not arbitrary or oppresive. See McQuillin, *Municipal Corporations* (rev. ed. 1968), §24.245, at 87. Legislation limiting the collection of garbage or rubbish to certain classifications is permissible as long as there is no arbitrariness or discrimination in the establishment of the classifications. But where a classification prevents a service from being available to all persons in like circumstances then the classifications established deny equal protection of the law. See *Boulevard Apts., Inc. v. Mayor and Council of Lodi* (1970), 110 N.J. Super. 406.

Euclid Ordinance 49-1974 places apartments in one category and single-family and two-family dwellings in another. The classification is based upon the nature of the buildings involved, the volume of garbage produced in each, and the cost of collection of such garbage. The classification does not take cognizance of the fact that people in apartments and people in single- or two-family dwellings produce the same type of refuse. Citizens living in both types of residences require the removal of their garbage and rubbish on a regular basis for health and safety reasons. There is no rational basis for the municipal decision

not to collect garbage from inhabitants of apartments on the one hand and to collect it from inhabitants of residential dwellings on the other. Thus, Ordinance 49-1974 contravenes the principle of equal protection. See *Yick Wo v. Hopkins* (1886), 118 U.S. 356, 373-374, 30 L.Ed. 220, 227.

Reversed and remanded for further proceedings according to law.

No other error appearing in the record, this cause is reversed and remanded to the Common Pleas Court for further proceedings according to law.

It is therefore considered that said appellant recover of said appellee their costs herein.

It is ordered that a special mandate be sent to said Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

DAY, *P. J.*, MANOS, *J.*, concur.

/s/ JACK G. DAY
Presiding Judge

PARRINO *J.*, dissents. (See Parrino, J.'s Dissenting Opinion incorporated by reference and made a part of this Journal Entry.)

PARRINO *J.*, Dissenting, in Part, and Concurring, in Part.

As to assignment of error number two, I do not agree that Euclid Ordinance 49-1974 contravenes the principle of equal protection of the law. Euclid has distinguished

the garbage collection problems of apartment, condominium and commercial structures from single and two-family residential structures for the quite real reasons of cost and the amount of refuse generated by such larger structures. Moreover, the amount of refuse generated by apartment and condominium structures can only practicably be collected and disposed of using the containerization or "dumpster" method as opposed to the use of scores of standard size garbage cans, which if left for collection within a limited curbside area as in the single family residence fashion would produce an eyesore and health danger. *Cf. Teager Co. v. Bor. of Bergenfield* (Law Div. 1972), 119 N.J. Super. 212. The collection of such greater amounts of refuse from larger, heavier "dumpster" containers would, according to the evidence, require substantial capital expenditure by Euclid for trucks equipped to handle "dumpster" containers and additional refuse treatment facilities. These considerations form the rational basis for separate classification of single and two-family residences from apartment, condominium and commercial structures for city garbage collection.

The majority concludes that all persons in like circumstances are not treated alike. Apartments and condominiums, comprised of three or more residential units constitute a system of cohabitation that can and, according to the evidence, in Euclid often does reach the proportion of single structures with populations in the hundreds. The advantages of apartment or condominium living in economy or convenience are not relevant here. What is relevant is the fact that apartment or condominium living concentrates large amounts of garbage at a single location, a fact which makes the collection of such garbage economically unfeasible for Euclid at this time.

Therefore, it is my conclusion that persons who choose to live in apartment or condominium structures are living in circumstances unlike those who live in single or two-family residential structures. It is therefore not a denial of equal protection of the law to deny municipal refuse collection to apartment and condominium dwellers.

The majority relies upon a 1970 New Jersey Superior Court decision, *Boulevard Apts.*, to sustain its conclusion of a denial of equal protection. The New Jersey Supreme Court, however, has recently ruled in *Pleasure Bay Apts. v. City of Long Branch* (1974), 66 N.J. 79, 328 A.2d 593, that a municipal determination to collect garbage only at curbside—thus practically foreclosing garbage collection to apartment structures—did not amount to invidious discrimination, did not deny due process, and did not deny equal protection of the law to owners of garden apartment complexes. The *Pleasure Bay* court found that the structures of garden apartment complexes constituted real differences from single family-type residential units in the collection of garbage and further found the cost considerations for the city to equip for "dumpster" collection provided a reasonable basis for the municipal decision to limit its garbage collection to only curbside service. *Id.*, 328 A.2d at 602-603.

I would therefore overrule the second assignment of error.

JOURNAL ENTRY OF THE COURT OF COMMON PLEAS

(Filed September 4, 1974)

Case No. 931403

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ROYAL AMERICAN CORPORATION, *et al.*,
Plaintiffs,

vs.

CITY OF EUCLID, OHIO,
Defendant.

JOURNAL ENTRY

Upon trial on the merits of this matter, the court finds that Euclid Ordinance 49-1974, passed February 19, 1974, is a constitutional enactment and classification by the Council of the City of Euclid.

IT IS ORDERED, ADJUDGED AND DECREED that plaintiffs' motion and demand for a preliminary and permanent injunction are denied; judgment is entered for the City of Euclid at plaintiffs' costs.

/s/ DANIEL H. WASSERMAN
Judge